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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,432

Applicant(s)

LEE ET AL.

Examiner

PAUL MCCORD

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 8/15/8.

DETAILED ACTION

1. Claims 1-15 are pending in this application. Claims 1-12 have been amended and new claims 13-15 added in Applicant's communication of 9/16/08.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 6-12 rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 1, 2, 6, 7, 9, 10, 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward further in view of Abajian (US PGPub 2002/0099731 hereinafter *Aba.*)

8. Regarding claim 1, 2, 6, 7, 9, 10, 12-15

Ward teaches:

A device and method for creating dynamic playlists by managing associative content in the form of metadata of audio contents at least including an artist. (Ward: Abstract: Column 1, l. 35-42) Metadata priorities in the form of user preferences including usage patterns or explicit preferences both of which relate to audio files or audio contents are assigned to audio metadata including usage dynamics and content metadata such as artist.

(Ward: Column 2, lines 18-25) Metadata of audio contents is read and various data extracted, filtered and set according to priorities in the form of user preferences sufficient to indicate preference of at least one artist over a second artist, thus leading to the preferred artist having eminence in the ranked list. (Ward: Col 2, l. 18-67; Col 8, l. 1-40; Figures 6-8) Ward further teaches that his system can utilize a directory structure of a disc drive for managing metadata and outputting and displaying audio contents according to set priorities in the form of elements of the metadata, associated with the media contents. (Ward: Col 6, l. 35-55; Col 8, l. 41-52; Figs 6-8) Rejection of a media item, selected on the basis of read metadata, causes such a negative preference to be written into the metadata, setting a downgrading of priority accordingly. The negative preference is set in media files that were chosen or otherwise prioritized according to read metadata. Ward further ranks and sorts audio content and associated metadata, anticipating various means of sorting and storing in Figures 6-8.

Ward does not teach that the metadata extracted, prioritized and otherwise acted upon is metadata of specific audio contents.

In a related field of endeavor Aba teaches:

A system and method for searching and prioritizing metadata including metadata of specific files, stored at least on discs, and including audio files by means of an automated tool. Discovered media has metadata specific to the discovered media file extracted therefrom and prioritized by sorting into bins. (Aba: Abstract: section [0008], [0032]; Fig. 2) The metadata specific to each media, including fields corresponding to composer, musician and album title, is read, compared, and categorized or otherwise prioritized in

accordance with specific attributes. (Aba: s. [0032], [0033]; Figs. 2, 6) Media files and their metadata are entered into a queue and assigned a processing time and a priority and distributed based on the set priority. (Aba: s. [0038]-[0041]) It would have been obvious to one of ordinary skill in the art at the time of the invention to enhance the reading of metadata and audio contents from a disc drive as taught by either Ward or Aba based on the user preferences of Ward with the method and system for prioritizing and automatically assigning priorities to read metadata of Aba. One would have been motivated to do so for the purpose of adapting the Ward device and method for searching a large database of media files.

9. Claims 3, 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of Aba as applied to claims 1, 2, 6, 9, 10 and 12 above further in view of Tsuk et al. (US Patent 7312785 hereinafter Tsuk.)

10. Regarding claim 3

Ward in view of Aba does not teach:

A device wherein the device further comprises: a disc drive unit that picks up and outputs the audio contents and metadata recorded on a disc; a control unit that controls the operations of playing back the audio content read by the disc drive unit according to the selection of a user and providing the user with the metadata for the audio content being played; and a display unit that displays a predetermined application program for playing back the audio content under control of the control

unit and also displays predetermined metadata determined by the metadata determination unit through the application program.

In a related filed of endeavor Tsuk teaches:

A device and system for controlling a media device (see Abstract; Col 5, l. 5-6) comprising **a disc drive unit that picks up and outputs the audio contents and metadata recorded on a disc** (Col 10: l. 55-67: aspects of the invention may be embodied in a hard drive); **a control unit** (Col 13, l. 1-10; Fig 8A: processor **802** functions as control unit) **that controls the operations of playing back the audio content read by the disc drive unit according to the selection of a user** (Col 13, l. 1-10; Fig 8A: user input device **808** allows a user to interact with the media player through the processor 802) **and providing the user with the metadata for the audio content being played** (Col 14, l. 19-33; Fig 8A; Fig 9: audio content metadata not limited to the names of songs provided to the user on display (**810, 904**)) **and a display unit** (Fig 8A: display **810**) **that displays a predetermined application program for playing back the audio content under control of the control unit and also displays predetermined metadata.** (programming of display described throughout Tsuk specification including playing back audio content (Col 5, l. 40-47,) and displaying metadata (Col 14, l. 19-33; Fig 9)

Tsuk applied to Ward in view of Aba teaches:

The CPU of Ward in view of Aba can function as or in concert with a control unit as disclosed by Tsuk to extract and determine metadata priorities, further either CPU or control unit can function as a metadata determination unit and in concert with the display

cause the media player to display any individual or predetermined grouping of metadata through the application program.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the media player programming and control means taught by Tsuk with the metadata prioritization and management means taught by Ward in view of Aba. One would have been motivated to do so for the purpose of creating a compact, portable and easy to use device for providing users with new media files which the user may preferably enjoy.

11. Regarding claim 4

Ward in view of Aba does not teach:

The device as claimed in claim 3, **further comprising: a decoder that decodes the audio content read by the disc drive unit and outputs the decoded audio content in the form of an original audio signal; and an input unit that generates a predetermined selection signal according to the user's selection and outputs the generated signal to the control unit**

Tsuk teaches:

The device as claimed in claim 3, **further comprising: a decoder that decodes the audio content read by the disc drive unit and outputs the decoded audio content in the form of an original audio signal** (Col 13, l. 11-25; Fig 8A: CODEC **812** decodes audio content from the file system and produces it as analog audio signal output to a speaker); **and an input unit** (Fig 8A: user input device **808**) **that generates a predetermined selection signal according to the user's selection and outputs the**

generated signal to the control unit (Col 13, l. 11-25; Fig 8A: upon receipt of a selection of a media file from the input device **808** the processor **802** supplies the media data to the CODEC **812**).

12. Regarding claim 11

Ward in view of ABA does not teach:

A method **wherein the meta data are displayed when the relevant audio content is selected.**

Tsuk teaches:

A method wherein selecting relevant audio content can be accomplished by the user inputting other input **1106** (Col 15, l. 42-62; Fig 11.) While not explicitly stated the selection of a media item for display by the user inputting other input **1106** is well known in the art as a way in which to call up metadata relevant to the selected media item i.e. song title, artist, length etc.

13. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of ABA as applied to claims 1, 2 and 6 above further in view of Tojo et al. (WO 02/098130 hereinafter Tojo.)

14. Regarding claim 5

Ward in view of ABA does not teach:

The device wherein **a predetermined matching table is created which contains metadata lists corresponding to the respective attributes.**

In solution of a related problem Tojo teaches:

A method and system for storing main information data and metadata (see Abstract) wherein metadata item and descriptive information is held in a priority matching table (see Abstract; Tables 1,2,3; Fig 6) Ward in view of Aba and Tojo both teach means of managing data information based on metadata information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include matching tables as taught by Tojo within the Ward in view of Aba device and method. One would have been motivated to combine Ward in view of Aba and Tojo for the purpose of referencing different control schemes or user profiles in descending order of priority.

15. Regarding claim 8 – see above rejection of claim 5: the device teaches the method.

Response to Arguments

16. Applicant's arguments filed 9/16/08 with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

2002/0099696 – a method of querying and sorting metadata

2002/0099737 – a method of reading extracting and prioritizing metadata

2002/0103920 – a metadata enhancement method and system

2002/0184622 – an audio data adaptation and prioritization method

2003/0050784 – a method of metadata search and prioritization

2004/0059705 – a method for adaptively characterizing metadata

2004/0172593 – a method for browsing and filtering metadata

2004/0194128 – a method for displaying metadata associated with a motion picture

2005/0027687 – a system for annotating searched metadata

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL MCCORD whose telephone number is (571)270-3701. The examiner can normally be reached on M-F 7:30AM - 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KUNTZ CURTIS can be reached on (571)272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. M./
Examiner, Art Unit 2614

/CURTIS KUNTZ/

Supervisory Patent Examiner, Art Unit 2614